SUPREME COURT OF THE UNITED STATES

(OCTOBER TERM, 1924.)

SAMUEL A. MYERS AND HARRY MYERS
S. A. & H. MYERS

v.

INTERNATIONAL TRUST COMPANY

PETITION FOR WRIT OF CERTIORARI
TO
THE SUPERIOR COURT FOR THE COUNTY OF SUFFOLK
AND COMMONWEALTH OF MASSACHUSETTS

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioners Samuel A. Myers and Harry Myers, co-partners as S. A. & H. Myers of Boston, in the County of Suffolk and Commonwealth of Massachusetts, respectfully petition this Court for a writ of certiorari to require that there be certified to this Court for review and determination the cause the record of which remains in the Superior Court for the County of Suffolk and Commonwealth of Massachusetts, No. 14826 in Equity, wherein your petitioners were the defendants and the respondent, the International Trust Company — a corporation organized under the laws of the Commonwealth of Massachusetts and having a usual place of business in said Boston, was the plaintiff, and wherein final judgment

has been entered against your petitioners pursuant to a decision of the Supreme Judicial Court for the said Commonwealth, rendered in April, 1925.

This suit was begun September 26, 1917 to recover from the defendants the unpaid balance of ten promissory notes. The defendants answered that the suit was discharged by a discharge in bankruptcy under the bankruptcy laws of the United States consequent upon the confirmation of a composition which the defendants had offered in bankruptcy. The Superior Court decided that the question involved was a federal question, to be determined by the federal law, and that the case was controlled by the decision in *Francis* v. *McNeal*, 228 U. S. 695, and that the confirmation of the composition was a bar. On appeal, the Supreme Judicial Court reversed this. In accordance with the rescript of this Court, a final decree was entered in the Superior Court on or about May 4, 1925 against the defendants for the amount of the debt claimed.

The composition proceeding was begun by the filing in the District Court of the United States for the District of Massachusetts in Bankruptcy, a petition as follows:—

"In the matter of

Samuel A. Myers and Harry Myers Alleged Bankrupts.	In Bankruptcy Number 24,571.

To the Honorable James M. Morton, Jr.,

Judge of the District Court of the United States for the District of Massachusetts.

The above-named bankrupts respectfully represent that a composition of forty per cent, upon all unsecured debts not entitled to a priority Twenty per cent in cash and two notes for ten per cent each, payable in three and four months from date, in satisfaction of their debts is to be proposed before adjudication by them to their creditors, as provided by the Acts of Congress relating to Bankruptcy, and they verily believe that the said composition will be accepted by a majority in number and in value of their creditors whose claims are allowed.

Wherefore, they pray that a meeting of their creditors may be duly called to act upon said proposal for a composition, according to the provisions of said Acts and the rules of Court.

Samuel A. Myers,
Harry Myers.

Subscribed and sworn to before me this twelfth day of February A. D. 1917.

Samuel O. Reinstein,
Justice of the Peace."

It will be observed that this offer does not mention the firm of S. A. & H. Myers, and does not limit the offer to any class of creditors whether firm or individual. This petition was endorsed on the back—

"In the matter of
Samuel A. Myers and Harry Myers
Alleged Bankrupts."

The offer to which this petition refers was in text:

"Respectfully represents Samuel A. Myers, of Boston in the County of Suffolk in said District, and Harry Myers, of Brookline in the County of Norfolk, and district aforesaid:— that the said Samuel A. Myers & Harry Myers have been examined in open Court at a meeting of their creditors, that they have filed in Court a schedule of their property and a list of creditors to be filed by bankrupts; and that they now offer the following terms of composition before adjudication to creditors, to wit:—

"To pay all claims entitled to priority in full, and to pay all unsecured creditors forty cents on the dollars of their just claims, 20% in cash and two notes of 10% each, payable in three and four months, respectively. The consideration to be thus paid, and the money necessary to pay all debts which have priority, and the costs of the

proceedings, to be deposited in the National Merchant's Bank of Boston, in accordance with the law in such cases.

Samuel A. Myers,
Harry Myers."

This was endorsed and filed in the same case.

It will be noted that this does not name the firm, or the place of business of the firm. It is not limited to any class of creditors, whether firm or individual.

The discharging confirmation order was:—

"In the Matter of
Samuel A. Myers
and
Harry Myers
Alleged Bankrupts."

On January 22, 1917 there had been filed an involuntary petition which alleged that "Samuel A. Myers and Harry Myers both of Brookline in the County of Norfolk, co-partners trading as S. A. & H. Myers" were insolvent and had committed acts of bankruptcy, "wherefore your petitioners pray that service of this petition with a subpoena may be made upon Samuel A. Myers and H. Myers as provided * * * and that he may be adjudged by the Court to be a bankrupt."

On February 10, 1917 the defendants had filed on the standard form in use in the Massachusetts District, a schedule of all their firm creditors and of all their individual creditors. The schedule set out that "Samuel A. Myers of Boston and Harry Myers of Brookline, respectfully represent that they are in the clothing business * * * have been partners under the firm name of S. A. & H. Myers having their principal place of business at Boston." Schedule A contained the debts of the partners. Schedule C was designed for the debts of Samuel A. Myers. Against this paragraph he wrote "that he has no individual debts." Schedule E, designed for the individual debts of Harry Myers, was similarly treated. In schedule A appeared the name and address of the International Trust Company as a creditor on notes for $20,000.

The notes referred to were signed "S. A. & H. Myers" payable to the order of "ourselves." They were endorsed on the back "S. A. & H. Myers, S. A. Myers, Harry Myers." They were given to the plaintiff in the ordinary course of the business of S. A. & H. Myers.

The composition was confirmed, resulting in a discharge in bankruptcy. The plaintiff sued, claiming to avoid the discharge and prevailed in the Supreme Judicial Court of Massachusetts (241 Mass. 50). The Supreme Court of the United States reversed this decision, and held that the discharge was a bar (263 U. S. 64). The plaintiff now claims that it is not a bar to individual liability of Samuel A. Myers and of Harry Myers. This is the claim which has failed in the Superior Court and prevailed in the Supreme Judicial Court of Massachusetts.

(1) In construing this offer of composition and petition for confirmation thereof to the United States District Court, the State Court has ruled that the offer was not the offer of "Samuel A. Myers of Boston" and "Harry Myers of Brookline" but was the offer of the firm of "S. A. & H. Myers."

(2) The State Court has ruled that the confirmation of the composition does not discharge Samuel A. Myers and Harry Myers from "all unsecured creditors" but only from such of them as were firm creditors only.

(3) The State Court has ruled that notwithstanding the fact that the schedules were in the standard form for partnership and individual debts, yet, because on them Samuel A. Myers and Harry Myers said they had no individual debts and no individual assets, the schedules were partnership schedules only.

(4) The State Court has ruled that notwithstanding the fact that Samuel A. Myers and Harry Myers, under the caption "Samuel A. Myers and Harry Myers" and without reference to a partnership name or fact, had offered to pay "all unsecured debts," they had made no offer to individual creditors.

The reasons relied on by your petitioners for the issuance of a writ of certiorari, and upon which your petitioners believe that this petition ought to be granted, are:—

1. That in said action the petitioners claimed a right, privilege and immunity under the constitution and statutes

of the United States, namely, that a discharge in bankruptcy resulting from the confirmation of an offer in composition made by "Samuel A. Myers and Harry Myers" to pay "all unsecured creditors" discharged Samuel A. Myers and Harry Myers from the claims of all unsecured creditors including the claim of the International Trust Company notwithstanding the fact that that creditor's claim was listed only once and then among other claims against Samuel A. Myers and Harry Myers as partners.

2. That the said decision is in conflict with decisions of this Supreme Court of the United States and of the federal courts and of the courts of other states on the same question, namely, *Francis* v. *McNeal*, 228 U. S. 695, 701; *Abbott* v. *Anderson*, 265 Ill. 285 — 106 N. E. 782; *Bear* v. *Liberty National Bank* (C. C. A. 4th) 285 Fed. 703, 705; *In re Forbes*, (D. C. Mass.) 128 Fed. 137, 139; and also involves a question of general public importance, namely, the rights of persons discharged on confirmation of composition under the bankruptcy act of the United States pursuant to an offer in composition in a proceeding which but for the offer would have gone to adjudication against the bankrupts as partners and as individuals with the resultant discharge of them in all capacities.

Your petitioners present herewith a certified copy of the entire record in said cause, including the opinion of the Supreme Judicial Court for the Commonwealth of Massachusetts.

Wherefore your petitioners respectfully pray that a writ of certiorari be issued to the end that the said cause may be reviewed and determined by this Honorable Court as provided by law, and that the said decision of the said Supreme Judicial Court of the Commonwealth of Massachusetts and the judgment of the Superior Court for the County of Suffolk in said Commonwealth pursuant to the rescript of said Supreme Judicial Court, be reversed by this Honorable Court, and that your petitioners may have such other and further relief in the premises as to this Court may seem just and proper.

SAMUEL A. MYERS
HARRY MYERS

By their Attorney,
EDWARD F. McCLENNEN.

COMMONWEALTH OF MASSACHUSETTS

County of Suffolk, ss.

Edward F. McClennen being duly sworn deposes and says that he is the counsel for the above-named petitioners and that the matters set out in the foregoing petition are true of his own knowledge.

EDWARD F. McCLENNEN.

Subscribed and sworn to before me this eighth day of May, 1925.

ARTHUR E. WHITTEMORE (Official Seal)
Notary Public.
My commission expires Nov. 1, 1929

I do hereby certify that the foregoing petition is presented in good faith and not for the purpose of delay and that in my opinion the case is a proper one for the issuance of the writ of certiorari prayed for.

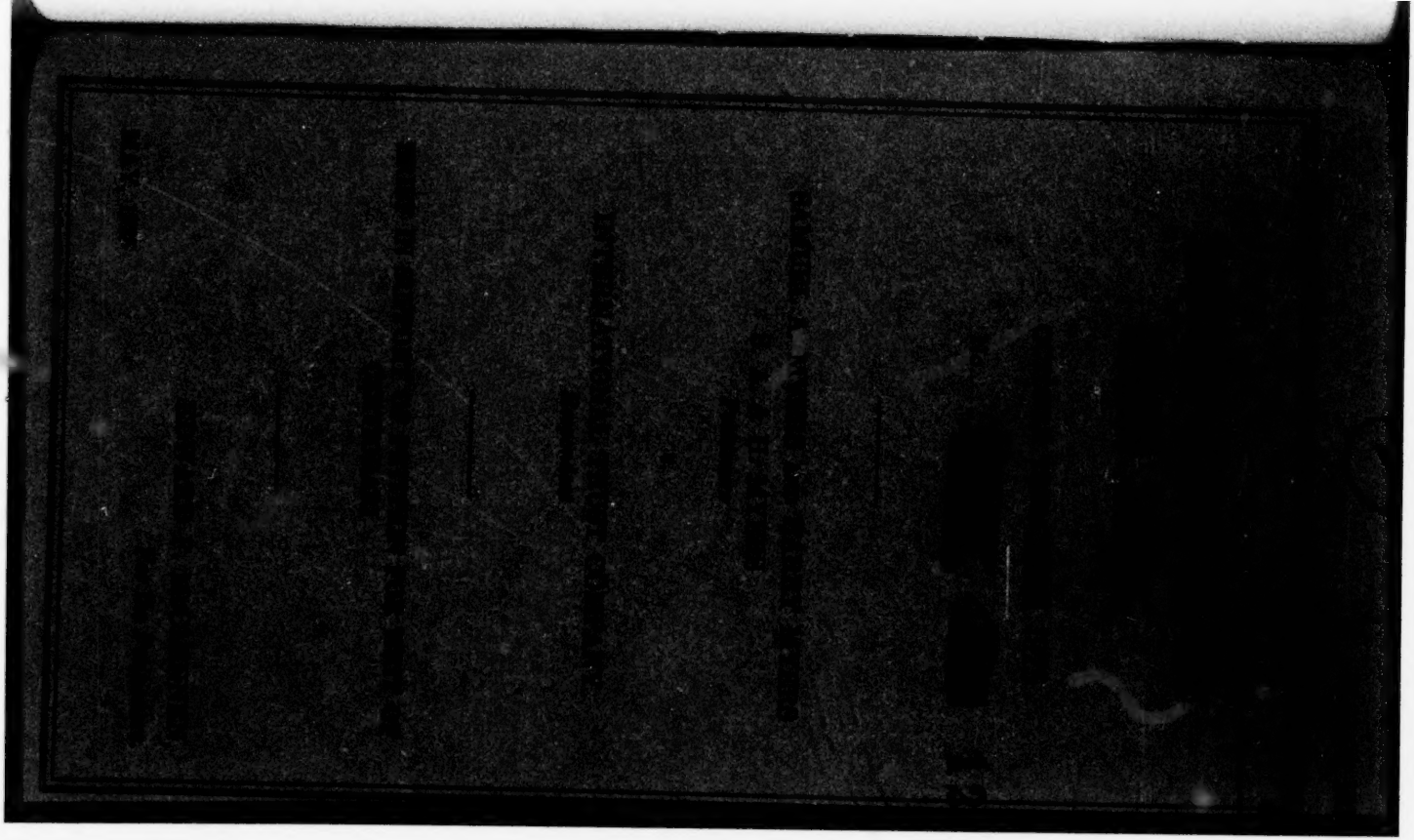
EDWARD F. McCLENNEN,
Counsel for the Petitioners.

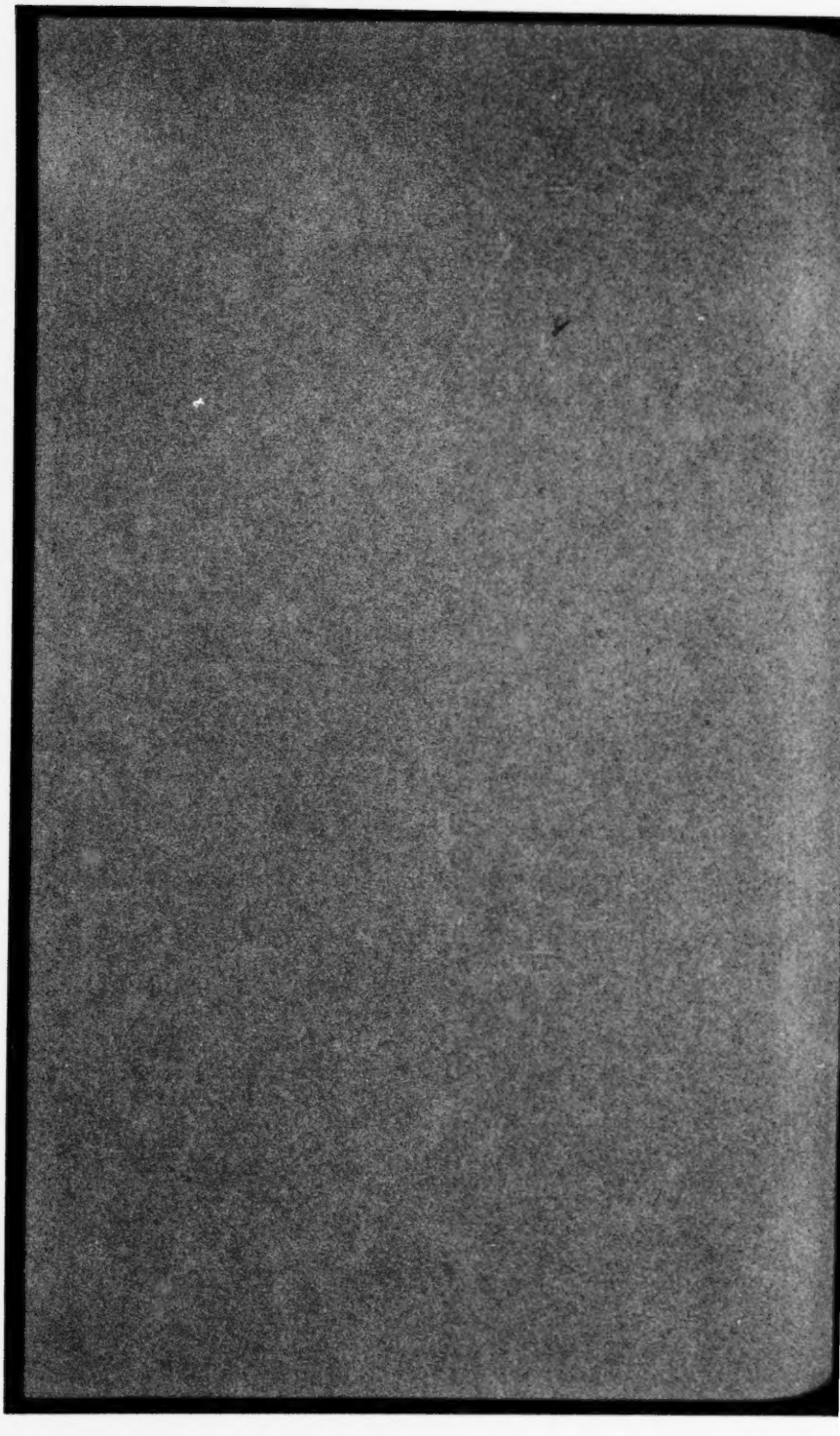
ACCEPTANCE OF SERVICE

International Trust Company, by its attorney of record, hereby accepts service of notice that a petition for certiorari in the above-entitled cause will be applied for in the Supreme Court of the United States on May 25th, 1925 and will be submitted to this Court at the opening of the Court at its first sitting thereafter, or as soon thereafter as counsel can be heard in pursuance of its rules in such cases made and provided, and that said respondent has received a copy of this petition and of the brief in support thereof and of the entire transcript of the record of the case.

Dated this 11th day of May 1925.

JOHN R. LAZENBY,
Attorney for Respondent.





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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1924

No.

SAMUEL A. MYERS AND HARRY MYERS
S. A. & H. MYERS
Petitioners

v.

INTERNATIONAL TRUST COMPANY
Respondent

BRIEF
IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI
FILED MAY 1925

The facts are succinctly stated in the petition which this brief accompanies.

GROUNDS FOR THE WRIT

The petitioners have a discharge in bankruptcy under the Bankruptcy Act of the United States, resulting from the confirmation of an offer in composition made before adjudication by "Samuel A. Myers of Boston" and "Harry Myers of Brookline" to pay "all unsecured creditors." This discharge gave the petitioners a right, privilege or immunity under the constitution and the bankruptcy statutes of the United States against the claim of the respondent who was an "unsecured creditor" of Samuel A. Myers and Harry Myers, both jointly and severally, for one debt only of $20,000 on ten promissory notes which appeared on their schedule of creditors

in the proper amount, against the correct name and address of the creditor International Trust Company. The decision of the Supreme Judicial Court of Massachusetts deprives the petitioners of this right.

1. The failure of the state court to accord to the discharge its full efficacy as interpreted by the courts of the United States, deprives the petitioners of a federal right and is ground for the exercise of the jurisdiction of the Supreme Court of the United States.

Myers v. *International Trust Co.*, 263 U. S. 64.

Friend v. *Talcott*, 218 U. S. 680; 228 U. S. 27.

2. The question as to the effect upon the individual liability of partners resulting from the confirmation of an offer in composition by the individual partners, is of general public importance.

3. The decision of the state court creates a conflict with the decisions of the Supreme Court of the United States and of the federal courts and of the courts of other states on the same question as more fully appears below.

THE DISCHARGE IN BANKRUPTCY IS A BAR TO THIS SUIT

The order confirming the composition which gave the discharge, was entered "In the matter of Samuel A. Myers and Harry Myers alleged bankrupts."

"The confirmation of a composition shall discharge the bankrupt from his debts other than those agreed to be paid by the terms of the composition and those not affected by a discharge."

Bankruptcy Act, Sec. 14 (c); *Compiled of 1916*, Sec. 9598.

"The effect of the composition proceeding is to substitute composition for bankruptcy proceedings in a certain sense,

and in a measure to supersede the latter proceeding, and to reinvest the bankrupt with all his property free from the claims of his creditors."

Cumberland Glass Co. v. *DeWitt*, 237 U. S. 447, 454.

The District Court of the United States for the District of Massachusetts "has consistently refused to make the adjudication of a partnership unless all the partners be adjudged bankrupt at the same time."

In re Forbes, 128 Fed. 137, 140; approved at 228 U. S. 701.

"We do not perceive that the clause imports that the partnership could be in bankruptcy, and the partners not."

Francis v. *McNeal*, 228 U. S. 695, 701.

"On the other hand it would be an anomaly to allow proceedings in bankruptcy against joint debtors from some of whom, at any time before, pending, or after the proceeding, the debt could be collected in full."

Francis v. *McNeal*, 228 U. S. 701.

"Finally, it would be a third incongruity to grant a discharge in such a case from the debt considered as joint but to leave the same persons liable for it considered as several. We say the same persons, for however much the difference between firm and member under the statute be dwelt upon, the firm remains at common law a group of men and will be dealt with as such in the ordinary courts for use in which the discharge is granted."

Francis v. *McNeal*, 228 U. S. 701.

The first question before the Massachusetts Court was the construction consonant with the federal law, to be placed upon an offer in composition filed in a court in which the foregoing quoted rules prevailed. Of course the offer is to be read in the light of those rules of the forum in which and to which the petitioners spoke. Their petition is quoted in full

in the present petition for certiorari. It is presented by "Samuel A. Myers of Boston" and "Harry Myers of Brookline." It is an offer to pay "all unsecured creditors." The firm is not mentioned. No class of creditors — firm or individual — is mentioned. The petition read by itself leaves no doubt, and raises no doubt, that the two individuals were speaking about "all" their creditors.

If one departs from the petition itself and looks at the surroundings, there is nothing in them to indicate that these men, when they said "all," meant not "all" but only "firm."

If this composition petition had not been filed, there would have been, according to the law and the rules prevailing in the Massachusetts District, an adjudication of these individuals as bankrupt, both as partners and as individuals, and all their individual assets as well as the firm assets would have been drawn into the Bankruptcy Court and the discharge which these individuals would have received would have been a discharge from all liability — both firm and individual.

Manifestly, the composition discharge sought by the petitioners was to be co-extensive with the discharge which they would receive in the ordinary course of bankruptcy.

The creditors' petition, as required by the rules of the District, petitioned as to each partner "that **he** may be adjudged by the court to be a bankrupt." The Bankruptcy Act gave each of them a right to offer a composition before adjudication.

> *Bankruptcy Act*, Sec. 12, as amended June 25, 1910, Ch. 412, Sec. 5; *Compiled*, Sec. 9596.

These two men had no assets except their firm assets. They had no liabilities except their firm liabilities for some of which they had individually endorsed. Under these circumstances, of course, their petition meant that they were asking for such a composition as would give them as much of a discharge as

they would get in the absence of composition in the ordinary course of bankruptcy.

They had filed schedules of their debts and assets — both firm and individual, as required by the rules of the District. A schedule does not cease to be a schedule of individual debts or of individual assets merely because the bankrupt says that he has none such. By this statement they were on their oath in the Bankruptcy Court, that they had no creditors other than those that appeared on the firm sheet, and no assets other than those that appeared on the firm sheet. If these statements were erroneous, they were open to prosecution, not because they had filed no schedules but because they had filed false schedules. If they had filed no schedules of individual debts or of individual assets they would not be open to prosecution for filing false ones. Therefore, they had filed schedules of all their debts and assets — both firm and individual. In their composition offer they say, without any limitation or exception, "that they have filed a schedule of their property and a list of creditors to be filed by the bankrupts." In the court in which this statement was made, this meant a schedule of their individual and firm assets and liabilities. As they had no assets whatever, except those in the firm, and no liabilities whatever, except those set out as liabilities of the partnership, including the debt to the International Trust Company for the $20,000, it is not surprising that they did not put that debt upon a separate sheet. It was down as a debt of $20,000 on notes to the International Trust Company. It does not say whether as maker or endorser. There was but one sum of $20,000. As partners in the firm, they were jointly and severally liable for that amount of money. They were not any more severally liable for it because they had put their individual names on the back of the notes. It is true that in a case where the partners had assets outside the partnership, individual endorsements would have a value for purposes of proof; but where they had none, the endorsements added nothing. They owed these notes for different reasons, but they did not owe them twice over.

Note the effect of the ruling of the State Court:—The defendants wanted a real thing, namely, such a settlement in

composition with their creditors that they could keep their assets and go on in business. If the ruling of the state court is right, then immediately upon the confirmation of the composition, instead of keeping their assets, those assets freed of the firm liabilities would be seizable by appropriate proceedings by the same creditors because of the individual endorsement liability of the defendants. As this would defeat the obvious purpose of the defendants, it emphasizes that they meant just what they said when they — "Samuel A. Myers of Boston" and "Harry Myers of Brookline" — offered to pay "all unsecured creditors."

The claims of "all unsecured creditors" including the plaintiff-respondent, were discharged, both with respect to the joint and with respect to the several liability.

Bankruptcy Act, Sec. 14, supra.

Francis v. *McNeal*, 228 U. S. 695, 701.

Abbott v. *Anderson*, 265 Ill. 285; 106 N. E. 782.

Bear v. *Liberty National Bank*
(C. C. A. 4th) 285 Fed. 703, 705;
reversed on other grounds, 265 U. S. 365.

In *Bear* v. *Liberty National Bank*, the creditor, claiming a lien, held a judgment on notes made by the partnership and **endorsed by the individual partners.** The court, in holding that an adjudication of bankruptcy against the partnership was of necessity an adjudication against the individuals, said (705):—"It cannot be that the bankruptcy of the partnership carries the partners into the proceeding with their assets and liabilities for the purpose of proving debts, adjusting equities, preventing preferences generally, and distributing to creditors the individual as well as partnership assets, and yet does not carry them in for the two other main purposes of the bankruptcy statute, namely, protecting creditors against the preference of liens acquired within four months of bankruptcy, and

discharging the debtor from his debts." (*Type not heavy in original.*)

The decision of the Supreme Judicial Court of Massachusetts is directly in conflict with this on a question of general public importance. Many men in business who have made the fresh start favored by the Bankruptcy Act, are at peril if this decision of the state court stands.

Respectfully submitted,

EDWARD F. McCLENNEN,
For the Petitioners

May, 1925.